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RIGHT OF THE PRESIDENT OF A COOPERATIVE TO VOTE AT DIRECTORS' MEETINGS

This question has occasionally arisen: May the President of the Cooperative cast a vote at directors' meetings although there is no tie in the voting in question. The answer is in the affirmative.

The President is in the first instance a director. For example, the usual provision found in cooperative bylaws is: "The officers of the cooperative shall be elected...by and from the board of directors...." As a director, the President may, and, in fact, should vote on all important matters.

In 2 Thompson, Corporations (3rd ed. 1927) §1230, the statement is made: "The method of conducting business at...directors' meetings is governed largely by the ordinary parliamentary laws." Now we turn to the fountain of parliamentary wisdom to find the following rule with respect to the power of a chairman or a president to vote: "If a member of the assembly, he is entitled to vote when the vote is by ballot... and in all other cases where the vote would change the result. Thus, in a case where a 2/3 vote is necessary, and his vote thrown with the minority would prevent the adoption of the question, he can cast his vote; so, also he can vote with the minority when it will produce a tie vote and thus cause the motion to fail; but he cannot vote twice, first to make a tie, and then to give the casting vote." Robert, Rules of Order (Rev. ed., 1915) 238. This same rule of parliamentary procedure is set out in Chafee, Parliamentary Law (1930) 73: "A Chairman votes when--

(1) there is a tie (except by ballot as he has already voted once),

(2) his vote will make a tie (except by ballot),

(3) the vote is recorded,

(4) the vote is by ballot."

The same general rule is stated by inference in 2 Fletcher, Corporations 202 (1931): "The President has no casting vote aside from his vote as director." This statement assumes that the director has a vote by virtue of his position as director even though he is President of the cooperative.

This problem does not seem to have arisen in any actual cases. The answer to it, herein stated, has come to be accepted as a general proposition of law.

The quotations from Roberts and Chafee indicate that the President would not vote on all matters. It should be noted, however, that he does vote whenever his vote becomes relevant, e.g., to make or break a tie on any question, where the vote is by ballot or when the vote is recorded. This eliminates the necessity for voting where the vote is viva voce and the result so clear that the President's vote would not and could not change the result, and therefore will not be recorded numerically. Other than these instances the President of the cooperative should cast his vote at meetings of the directors.

RECENT CASES

Torts - Telephone Interference.

Plaintiff, a common carrier of crude oil, had constructed telegraph and telephone lines to facilitate its common carrier operations. These lines were

completely finished in 1930. The plaintiff had obtained permits and franchises to construct such lines. In 1937, the defendant, a rural electric membership corporation, had built transmission lines on the same highway above the telephone and telegraph lines of the plaintiff. The plaintiff brought an action for an injunction and damages on the theories of trespass and nuisance on the part of the defendant. The contentions of the plaintiff were that (1) its grant to use the highways for telephone and telegraph lines were exclusive, because of priority in time, and that (2) the defendant's transmission lines caused inductive interference with telephone service and also involved danger to the plaintiff's property and employees. Held, the franchise of the plaintiff was not exclusive and the action would not lie. Ill. Pike Line Co. v. Indiana Statewide Rural Electric Membership Corporation, 24 N.E. (2d) 805 (Ind. App. 1940). The court states:

"The grant and the use made of the highway by the appellant for its poles and wires, used exclusively in the conduct of its own business, would come far short of constituting an exclusive right to use the highway. Even if the telephone poles and wires of the appellant were used in the general interest of the public by the transmission over it of messages of the public at large it would still fall far short of carrying an exclusive use of said highway for that purpose or any other legitimate highway purpose. Both the appellant and the appellees apparently have valid grants to use said highway for the purposes of each, subject of course to the rights of the public. That each have grants to use the highway is not disputed. These grants are co-ordinate and independent of each other.

"...It is true that the evidence shows that there would of necessity be some interference, by induction, yet the further evidence is that such interference, if any, can be readily overcome. Under the evidence that damage, if any, is far from irreparable and falls within the category of damnum absque injuria and this is particularly true in view of the evidence that the appellees' power line was to be built in accordance with the ordinary and reasonable standards of electrical engineering."

Municipal Corporations - Statutory Construction - Public Utility Districts.

Plaintiff brought a taxpayer's suit against a public utility district of the State of Washington to enjoin the district from purchasing the electrical system of a private public utility. The plaintiff's primary objection was that the statute governing the purchase of electrical facilities by public utility districts contains the following proviso: "Provided, That no public utility owned by a city or town shall be condemned hereunder, and none shall be purchased without submission of the question to the voters of the utility districts...." The plaintiff also contended that the district had failed to provide for a plan or system resolution as required by statute. Held, judgment for the defendants. Bayha v. Public Utility District No. 1, 97 P.(2d) 614 (Wash. 1939).

The court construed the statutory proviso as intending to prevent the purchase of electrical facilities by a district without submission of the question to the voters only where the vendor public utility in question was owned by a city or town. The court properly points out that the terminology "none shall be purchased" used in the statute means nothing standing alone and must be interpreted only in conjunction with its antecedent. The proper antecedent in this case is a "public utility owned by a city or town."

Consequently, since the facility in the instant case was not owned by a city or town the proviso is not brought into operation.

On the second point the court points out that only in certain instances, namely, where the indebtedness of the district is raised to a certain limit.

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particular time specified when the plan or system resolution need be passed by the commissioners of the district. Therefore, the court feels that the taxpayer had no standing to enjoin the sale because the time of creating the plan or system resolution was within the discretion of the commissioners. (Several other technical points relating particularly to Washington Public Utility District Law were involved and in each case the ruling was in favor of the district.)

Torts - Telephone Interference.

Plaintiffs, operators of two, single wire, grounded telephone systems had been rendering telephone service to rural residents for many years. The defendant, a rural electric membership corporation, constructed electric power lines on and along the same highways occupied by the plaintiff's lines. The operation of the electric power lines resulted in inductive interference with the plaintiff's telephone service which the plaintiff sought to enjoin. The lower court found and rendered judgment for the plaintiff for $873.00. The defendant's appealed. Held, reversed, as: "The trial court erred in awarding damages to the plaintiff and against the defendant." Hale v. Farmers Electrical Membership Corporation, 99 P.(2d) 454 (N.M. 1940).

The court enters into a thorough discussion of the basis of the lower court's grant of damages, namely, the maxim, "Sic utere tuo ut alienum non laedas." The court points out that although the meaning of the maxim is "so use your own as not to injure another's property", the maxim can determine no right and can define no obligation. Furthermore, that in finally determining the application of the maxim, the court must consider the usages and necessities of business. In the absence of a trespass, and where damages may be avoided only at a prohibitive cost, equity will not prevent the defendant from using his property.

The defendant, the court feels, "is under no legal duty to select a type of power system the primary purpose of which is to facilitate telephone communications in the vicinity of its electric lines. The defendant has a right, in designing its power system, to design a type of system which accords with the best modern engineering standards for the accomplishments of its intended purpose, i. e., to supply electric service in rural areas and its whole duty toward the plaintiff is to avoid all unnecessary crossings, conflicts and inductive exposures and to apply such mitigative measures on its own lines that may exist and that are determined to be the best engineering solution to the interference problem.

The plaintiffs argued that they were entitled to recover under a state statute which provided that corporations, such as the defendant, might construct power systems along the highway "provided, however, the same shall be constructed in such a manner as not to interfere with any existing system or systems...." The court, however, rules that if the statute has reference to telephone lines, nevertheless it merely means that the cooperative, as a junior licensee (in point of time) may not interfere with the physical property of the senior licensee. In other words, the statute is merely a prohibition against "unreasonable interference."

Torts - Negligence - Liability of Electric Company for Injuries Caused to Plaintiff By Contact With Electric Transmission Line Running Over Plaintiff's Farm.

Electric company had maintained for many years a high power electric transmission line in the vicinity of the plaintiff's farm, 16 feet from a barn and 17 feet above the ground. Plaintiff, while attempting to connect a wire cable to the end of the hay carrier track in the barn, was injured by a shock resulting from contact of the cable with the electric line. The defendant company had observed all the statutory and regulatory precautions with respect to the maintenance of high power lines. The lower court directed a verdict for the defendant. On a former appeal to the Supreme Court of Iowa, it had been held that this was error on the ground that the questions of negligence involved were matters for the jury. In this former opinion, the appellate court had intimated that the defendant was negligent under common law rules. See 283 N.W. 81 (Iowa, 1938) 1 R.E.A. L.J. 27 (1939). Held, original opinion withdrawn upon rehearing. Aller v. Iowa Light & Power Co., 288 N.W. 66 (Iowa, 1939).

The trial court's decision directing a motion for a verdict for the defendant was correct. The theory of the court is that the defendant had complied with all rules and regulations relating to the maintenance of electrical facilities. On the other hand, the plaintiff was a mature person (36 years of age) and therefore was "presumed to know, what is common knowledge of all intelligent persons in this day and age, that a metal wire will conduct electric current and one, who has hold of a metal wire and cable causes it to come in contact with a power line is certainly to be injured." Counsel for the plaintiff had contended that the plaintiff knew nothing of the dangerous character of the act because he had testified: "I have never made any study of electricity." The court feels that one does not have to make a study of electricity in order to possess the knowledge referred to which is common to all intelligent persons in this day and age. It should be noted that the court stresses the fact that the plaintiff had lived on a farm for three years where electricity was supplied and that he was familiar with electricity for years. In the absence of this finding the result might well have been otherwise.

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A-177 Stock in Trade (Calif.)

A-178 Income taxes applicable to REA employees.

TAX MEMORANDA

State tax digests for N.J. and N.Y. (Note these are a part of a series covering the 48 states and are subject to modification upon final consideration and review.)

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T-213 Analysis of Pittman v. HOLC (inter-governmental immunities from taxation).

T-214 Kentucky ad valorem taxes.

T-215 La. ad valorem taxation (proposed legislation).

T-216 Iowa ad valorem taxes.

T-217 S.C. ad valorem taxes (proposed legislation.

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April 1940 Pamphlet supplementing Pocket Parts
Insurance Law Pamphlet - effective 1-1-40

Massachusetts - 1940 Semi-Annual Supplement to Annotated Laws of Massachusetts

Connecticut - 1939 Supplement to General Statutes (January Session 1937,1939)

West Virginia - 1939 Supplement to the West Virginia Code of 1937- complete annotations

Kentucky - Carroll's Kentucky Codes Civil and Criminal with forms - annotated - 1938 Revision (1 vol.)

also 1939 Pocket Supplement

Michigan - Mason's 1940 Cumulative Supplement to the Compiled Laws of Michigan 1929 (Vol.5)

March, 1940 Issue of Mason's Mich. Annotations and Current Digest

Arkansas - Acts of Arkansas 1939 and Extraordinary Session 1938

Wisconsin - Laws of 1939